

A Yt Copy Cop?

Why Copyright Violations Happen in Schools and How to Prevent Them

By and large, educators are honest and ethical. Yet, copyright violations such as those described in the following scenarios are all too common in many, if not most, schools:

- Teacher Gray shows Disney's *The Little Mermaid* to reward her students for scoring exceptionally well on a recent test.
- Teacher Black adds images taken from various Internet sites to a multimedia presentation he uses to complement his lecture on Egypt.
- The district purchases a single-use license for Photoshop, but Technology Coordinator Green installs it on all the computers in a classroom.

- Teacher Scarlet downloads songs from a file swapping service to listen to while working on her lesson plans.
- Media Specialist White transfers an educational film to videotape because the district has decided it will no longer support its 16mm projectors.
- Teacher Brown copies short stories and essays from a variety of magazines, textbooks, and Web sites to create an anthology for his AP English class.

Interpreting, and to some extent enforcing, copyright policies has long been regarded as a responsibility of the school's library media specialist. Intellectual property, before schools adopted computers and connected to the Internet, was found primarily in print and audiovisual formats—both types of resources largely controlled by the school's librarian. The librarian is among the few educators whose professional training includes information about copyright, and he or she has traditionally been viewed as the local expert on intellectual property issues.

*By Doug Johnson
and Carol Simpson*

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However, with intellectual property increasingly available in digital formats, the role of the library media specialist as the “copyright cop” is untenable. All educators who deal with technology need to understand the legal and illegal uses of intellectual property if a school hopes to both keep free of copyright lawsuits and provide ethical models for students to emulate.

Why Does Abuse Happen?

Why does intellectual property not merit the same respect among educators as physical property? Our experience shows many factors influence educators’ behavior with respect to copyright.

Ignorance and Misperceptions. Formal training slights educating teachers about copyright. NCATE’s Unit Standards (http://www.ncate.org/documents/unit_stnds_2002.pdf) do not address copyright, and only two of NCATE’s affiliate accreditation organizations (ISTE and AECT, linked from the NCATE Program Standards page, <http://ncate.org/standard/programstds.htm>) include an under-

standing of copyright as one of their competencies. For example, NETS for Teachers standard VI asks teachers to “model and teach legal and ethical practice related to technology use.” And AECT’s Initial Standard 3.4 focuses on policies and regulations “that affect the diffusion and use of instructional technology,” including copyright law. This situation results in a number of poorly understood concepts about the use of intellectual property in schools.

Fair Use. Educators too often interpret fair use as “any use so long as it is done in school” or “if it benefits the kids, it must be okay” or “we aren’t making any money on it.” But even CONFU (that’s Conference on Fair Use, not just CONFusion abbreviated) determined in their final report that there is:

no simple test to determine what is fair use. Section 107

Editor's note:

This article is intended to provide a discussion of copyright problems and solutions and not as specific legal advice.



of the Copyright Act sets forth the four fair use factors which should be considered in each instance, based on particular facts of a given case, to determine whether a use is a “fair use”: (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and (4) the effect of the use upon the potential market for or value of the copyrighted work.

Beyond the four-factor test of fair use prescribed in the law, there are several guidelines that are generally agreed to be fair use. Each of the guidelines affects a specific type of use, such as using copyrighted materials in multimedia presentations. The perceived difficulty in determining whether a use meets the statutory fair use rules as above, or the various guidelines, dissuades many educators from even making a good faith attempt to question whether their use of intellectual property is legal.

Information on the Internet. Plenty of myths surround copyright, especially as it relates to information found on the Internet. Brad Templeton, chairman of the Electronic Frontier Foundation, lists 11, including “If it doesn’t have a copyright notice, it’s not copyrighted.” (*Editor’s note:* See Copyright Resources on p. 22 for this and other URLs.)

Intangible Property. Except in the case of open source software, when you buy a piece of software (e.g., Photo-shop), you are actually buying the right to use the software, not the software code itself, on a fairly restricted basis. The software license (often viewable only in a small window

while the product loads) describes the specific uses you are allowed.

The Digital Millennium Copyright Act of 1998 and the Multimedia Fair Use Guidelines (1996) attempt to address copyright changes that new technologies and media have brought about, but the effects of these have not been widely discussed in the professional literature that teachers actually read. Because so many teachers have practiced copyright carte blanche for so long, attempts to correct their bad habits may not be met with the nicest response.

Ease and Convenience of Copying.

Violating copyright is now faster and easier than it has ever been. A computer program, file, or digital image copies in seconds, whereas copying print materials requires a trip to the photocopier to laboriously reproduce the source, one page at a time. Peer-to-peer file sharing services, video digitizers, and even the simple copy and paste commands all contribute to the ease of violating copyright laws. Teachers gleefully demonstrate to students how simple it is to find a fetching graphic and “keep it on your computer to use whenever you like.” The development of large libraries of the works of others, without payment or permission, has resulted in a climate of entitlement.

Often teachers are pressed for time and simply feel they must violate copyright because there is no other option. A common example of this type of activity is showing entertainment videos to keep students occupied during rainy day recess, for perfect attendance rewards, or for assorted babysitting activities such as when teachers are behind in their grading.

Intangibility of Intellectual Property.

Were I to walk into a Wal-Mart store and tuck a camera under my coat and walk out, it is obvious that I have





deprived Wal-Mart of its property and of the revenue they could earn by selling it. I have the camera; Wal-Mart does not. However, were I to borrow a friend's installed copy of Photoshop, install another copy of it on my computer, and then return the physical program to my friend, the deprivation of property becomes an abstract concept instead of a physical reality. The friend has his program back, so nothing is really missing, is it?

The intangibility of intellectual property often leads people to view copyright violations as a "victimless" crime. Denying an intellectual property holder his potential profit is not deemed as serious as depriving a physical property holder of a currently held physical possession. Besides, schools can't afford to actually purchase all the software they truly need, so making an extra copy "for the kids" doesn't hurt anyone because the person who bought the software still has his or her own copy. Some rationalize, saying that training kids on commercial software might even promote sales of the software to the kids' parents.

On an even more abstract level is understanding that even when there is no loss of remuneration, intellectual property holders still have the right to control the use of their property, especially regarding use of materials that may no longer be available for purchase (out of print or out of production) or works that have never been available for sale (e.g., photographs, letters, e-mail messages).

Perception of Copyright as a Blue Law. Some copyright violations are so often committed and of such longstanding practice that many educators are genuinely surprised that they are copyright violations, such as showing movies that do not have a public performance license as a reward, adding copyrighted material to a Web site without permission, using a

transparency of a copyrighted cartoon in an inservice workshop, copying workbook pages from sample copies, or adding unlicensed music in the background of a movie. Even administrators will retort, when informed of some blatant offense, "You show me one school that has been successfully sued for that!"

Difficulty and Cost of Obtaining Copyright Permission. Given enough time and usually the willingness to pay for the right, most intellectual property holders will allow some use of copyrighted materials. But determining how and to whom the request should be made, waiting for a response (even by e-mail), and paying any required charge for the use is often more confusing, time consuming, and expensive than many teachers are willing to undertake. Publishers and other copyright owners don't make compliance simple for educators, and frequently refuse to answer questions about permissions and licensing. Eventually educators tire of the game and just ignore the option.

Poverty and Emotional Appeals. Teachers view their job as a means of bettering the lives of children and improving society. But illegal activities, even when done for good causes or because of poor funding, are still illegal. It's that old "ends don't justify the means" problem. A fair-use analysis includes much more than simply a finding of nonprofit educational use.

Civil Disobedience in Reaction to Protections. Laws that grant greater and longer copyright protections to owners, more sophisticated physical copyright protection schemes, and increased consolidation of ownership of intellectual property by powerful for-profit corporations all heighten the perception among users that the laws unfairly protect the wealthy. In times when educational funding is viewed by many as inadequate and

decreasing, a certain Robin Hood mentality develops. The idea that the large corporation in the big city will never know what is happening in the small towns pervades decisions on using copyrighted materials.

Copyright Complexity. Copyright has so many shades of gray, without a law degree one can never be certain he is making a correct interpretation, and even lawyers disagree. Even teachers or administrators who diligently try to follow the letter of the law may find themselves in a copyright quagmire. Why bother to obey when you are just going to get into trouble anyway? In areas of new technology, none of the old rules fit, so if you were inclined to play by the rules, what rules should you apply? New regulations, such as the TEACH Act, come down with no interpretation on areas of internal conflict, so school personnel are forced to interpret complex legislation in ways that beg to become a test case in court.

Mixed Messages. Conflicting district policies and practices also play into the puzzle. “Do I follow district policy on copyright, or do I copy these materials that will help our students score higher on the standardized test?” When one can’t figure a way to understand the copyright regulations, it is simpler and more expedient to ignore them. Seeing administrators ignoring copyright (through neglect or ignorance) only fuels the conviction of teachers and paraprofessionals that carte blanche is appropriate, despite what the Board policy may state. The fact that few copyright actions against schools are publicized compounds the idea that copyright is no big deal. However, if you speak privately with school officials in a local area, virtually everyone can identify a school in the area that has received a cease and desist letter or been the target of an actual copyright suit within in the past 15 years. School-

library.org hosts a voluntary database of copyright actions in its Copyright Resources section.

What Can We Do about It?

Library media specialists, technology directors, and administrators are unlikely to prevent every violation of copyright law and abuse of intellectual property in their schools, but that does not mean they should not make good faith efforts to do so. In fact, it makes very good sense to make all reasonable efforts to ensure compliance with copyright laws related to activities common in schools.

When a school is identified as being a party to a legal action involving copyright infringement, one of the factors considered is how blatant the infraction appears to be. If, for example, the school were allowing students to download and share MP3 music files at a music swap fest sponsored by the student council, a court might find that the school was complicit in any infringing activity. If one teacher installs software for which the school does not own a license, the district might not be liable if the district can show that the teacher knew the rules and the district took appropriate steps to prevent the installation of unlicensed software. However, if the district technology office installs such software in an entire school or across the district, there would certainly be reason to complain of flagrant disregard of copyright requirements and the district would have legal responsibility for the infringement.

So how can we address the issue without becoming “Big Brother”? Here are some common sense recommendations on dealing with the thorny issue of copyright.

Get Information into Teachers’

Hands. Copyright is a complex and evolving subject, and schools need to teach and provide information about proper intellectual property use as a part of ongoing staff development





efforts. Schools can and should provide short, readily understood guides regarding copyright of all materials, especially those in digital formats. Groton (Connecticut) Public Schools has an online copyright manual, and the University of Texas System has developed an online Copyright Crash Course that schools may wish to model. (The Crash Course is geared toward university users, but the school exemptions still hold true for PK–12.) Basic copyright notices should be placed on circulating software, videos, Internet terminals, and photocopiers. Some notices will protect the school from lawsuits if particular types of infringements take place. *Copyright in Schools* contains sample language. Technology and library newsletters to staff should address intellectual property issues.

Intellectual Property Rights Benefit Users and Creators. Copyright laws benefit individuals in two ways. First, teachers and students themselves may be creators of intellectual property for which they would like control and the potential for remuneration. (Schools may own the rights to teacher-developed materials, under work-for-hire guidelines.) Second, those who create intellectual property (e.g., software) are more likely to support and continue to develop that property if there is a financial reward for doing so. These concepts should be understood by all school staff members as well as students.

Conduct Audits and Monitor Photocopying. The Mankato (Minnesota) School District where co-author Johnson works uses Apple Remote Desktop to scan the more than 2,000 district computers for executable programs every two years. The technology staff then compares the programs found with the licenses on file. When a program is found on a computer for which the district does not have a license, the technology office sends

a letter to the user of that computer, carbon-copied to the building principal, asking the user to provide proof of purchase of the program for its files, purchase the program and then send a copy of the license to the office, or remove the program from the computer. Were the district to be audited, these actions will help show due diligence in enforcing copyright. The Software and Information Industry Association (SIIA) identifies additional software programs that can perform similar audits (<http://www.siiia.com/piracy/audit.asp>).

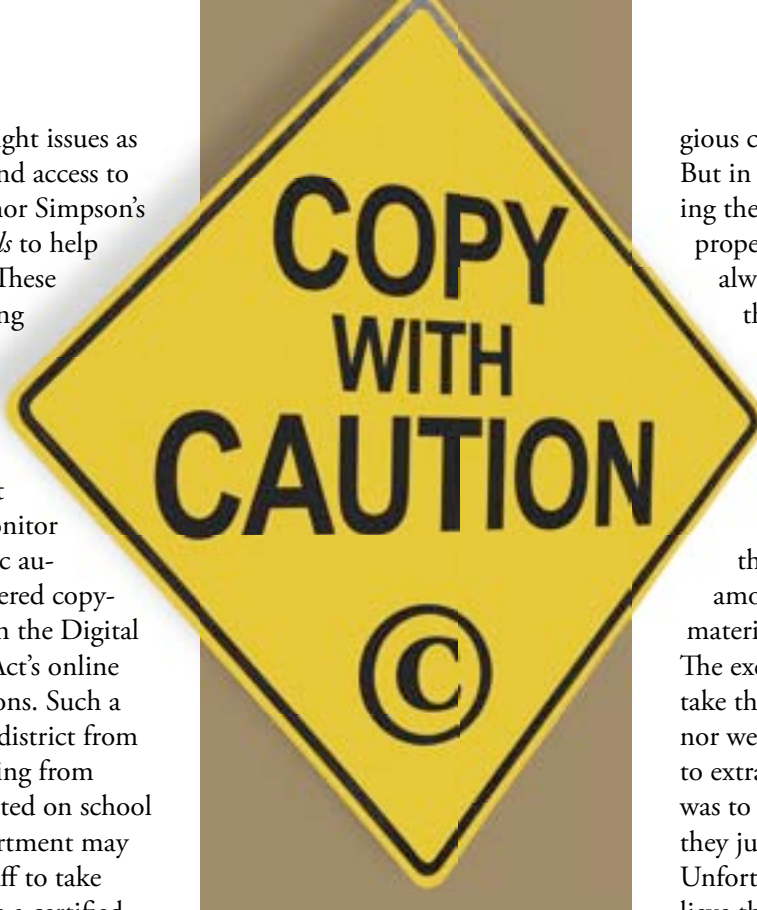
Personnel in district print shops or who run building photocopiers need to have a firm understanding of copyright laws. If a teacher requests copies of an item that may be copyrighted, it should be returned to the building principal for his or her signature before the print job is completed. Photocopying consumable materials is a common infringement that should be monitored closely.

Maintain Budgets That Allow Legal Purchase of Needed Materials. A budget for software, a process for selection and adoption of software, and the purchase of building or district licenses when feasible all decrease the likelihood of illegal software use. If teachers use videos for reward purposes, the district should purchase public performance licenses. Royalty-free music and clip art with few use restrictions should be available to teachers and students. Extracurricular activities, not having the same fair use protections of direct teaching in the classroom, need extra guidance and supervision in their use of copyrighted materials such as videos for lock-ins or other social events, music for dances, and images/music for fundraisers such as CD-ROM yearbooks.

Designate a Copyright Expert. Schools need a “go-to” person when copyright questions arise. These people should have the budget to

receive training in copyright issues as they pertain to schools and access to resources such as co-author Simpson's book *Copyright for Schools* to help them answer questions. These folks also need the backing of the administration if an unpopular answer is provided to a copyright question. The district needs a copyright coordinator who will monitor licenses, conduct periodic audits, and act as the registered copyright "agent" identified in the Digital Millennium Copyright Act's online service provider protections. Such a position can protect the district from infringement suits resulting from copyrighted material posted on school Web pages. The IT department may want someone on the staff to take SIIA's seminar to become a certified software manager to verify compliance with licensing requirements and tracking (<http://www.sii.com/piracy/seminars.asp>).

Serve as Models of Ethical and Legal Behavior. You do not need to work with young people very long before realizing that they learn more from your behavior than from your words. If we wish to develop moral, law-abiding citizens, we as educators must act ethically and legally ourselves. Copyright should be a part of the information literacy and technology skills curriculum. The topic should be dealt with seriously, and with respect. Using a "nudge, nudge, wink, wink" curriculum that says "just use discretion, and you won't be caught" conveys the message that infringement is perfectly fine. It says that the end justifies the means. If you were to voice those sentiments to the school board to approve as goals of a program, they wouldn't fly; yet they may be current practice. Perhaps a technology skills curriculum audit is in order, along with the software audit.



Walking the Talk

Following copyright laws in schools comes down to a few radically simple ideas. The first is a concept that may not have been considered in many schools: copyright is federal law. Schools are quite serious about many federal laws and regulations. The Americans with Disabilities Act, for example, is well respected and enforced. In our civics classes, we regularly tell students that when you don't agree with a law, you work to change it. However, we appear not to practice what we preach when it comes to copyright.

Second, obeying copyright is an ethical necessity. Although following the current copyright act may not be the most popular course of action with teachers, the fact that students are observing us and modeling their behavior on ours is the single most important reason to obey the law.

Finally, copyright compliance is the right thing to do. Ethical use is a difficult concept to teach in many schools, simply because of the reli-

gious connotations that are attached. But in this context, we are considering the theft of someone's work and property. What some educators don't always realize is that writers make their living creating educational materials; if they don't sell their creations, they cannot make a living.

Congress provided certain exemptions from the requirements of copyright so that schools could use limited amounts of published and marketed materials to assist in teaching students. The exemptions were not intended to take the place of purchased materials, nor were they designed to contribute to extracurricular activities. The intent was to give the schools an assist when they just needed "a little something." Unfortunately, we have come to believe that "if a little is good, a lot is better." Having an understanding of the limits of copyright and fair use is essential to sound business practices in schools as well as sound educational and ethical practices. Knowing the limits and the rules will help responsible educators protect their schools and their personnel from legal action concerning copyright.



Doug Johnson has been director of media and technology for the Anoka (Minnesota) Public Schools since 1991. Doug is a veteran author whose works have appeared in books, journals, and magazines. Doug serves on L&L's Media Matters column.



A public school educator for 25 years, Dr. Carol Simpson has taught every grade from kindergarten through graduate school. Currently, she is an associate professor in the University of North Texas School of Library Sciences and a fellow in the Texas Center for Digital Knowledge. She is the author of Copyright for Schools: A Practical Guide (4th ed., Linworth, 2005) and Ethics for School Librarians: A Reader (Linworth, 2003).